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**TESTIMONY SUBMITTED IN OPPOSITION TO MI HB 5254**

**House Health Policy Committee**

**Submitted by:**

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Medco Health Solutions, Inc.**

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Mister Chairman, and members of the Committee, my name is Vicki Knighton and I am Senior Director of Government Affairs for Medco Health Solutions, Inc., which is a pharmacy benefits management company, or "PBM." I would like to thank you for this opportunity to testify today in opposition to House Bill 5254. This bill will significantly drive up the cost of prescription drug care in Michigan. As you know, public and private plans throughout this state are struggling to preserve the pharmacy benefits that many Michigan residents count on each day. Yet HB 5254 seeks to handcuff these payors by restricting competition and by further limiting what they can do to control costs.

Medco is a leading provider of comprehensive, high-quality, affordable prescription drug care in the United States. We work with patients, pharmacists, physicians and health plan sponsors to improve the quality of pharmaceutical care provided to patients, while helping to control the growth in drug costs. We work under contract with health plan clients throughout the country that are providing prescription drug benefits for their members and employees, totaling more than 60 million covered lives. Our clients include very sophisticated health care purchasers, including:

- Fortune 500 corporations and smaller employers
- local, state and federal employee and retiree groups
- Blue Cross/Blue Shield plans
- unions, and
- insurance carriers and managed care plans.

In many cases here in Michigan and throughout the country, our clients have elected to provide a pharmacy benefit to their employees and retirees. Because they have a limited amount of resources with which they can fund these benefits, they look to Medco and our competitors for solutions that will help them better manage rising costs.

In other words, our clients often face the difficult choice between making a change in their benefit design (in order to save money) or restricting or terminating their drug benefit all together.

When viewed through this lens, it is easier to understand why our clients consider pharmacy networks to be among the most important tools to help manage costs. In fact, this was confirmed by the Federal Trade Commission (FTC) in a letter commenting on any wiling provider legislation in Rhode Island. In that letter the FTC found that:

*“An abundance of empirical evidence now exists demonstrating that, other things equal, selective contracting increases the intensity of competition among providers, which is manifested in lower prices paid by insurers to providers.”*

*“When insurers have a credible threat to exclude providers from their networks and channel patients elsewhere, providers have a powerful incentive to bid aggressively. Inclusion in a restricted panel offers the provider the prospect of substantially increased sales opportunities. Without such credible threats, however, providers have less incentive to bid aggressively, and even managed care organizations with large market shares may have less ability to obtain low prices.”*

This finding by the FTC is significant because it reveals that networks are effective at encouraging competition. And it is the competition among providers that affords the plan its best chance to obtain an attractive market-based price.

But if HB5254 were enacted, there would be little or no competition among pharmacy providers. Section 3D of the proposed legislation would require that PBMs and pharmacies engage in a business relationship, essentially forever; and that they must continue that relationship, in all but the most egregious circumstances, even when it makes little or no sense for the ultimate payer of the benefit for that to occur. Further, in the narrow circumstances in which termination of a relationship is permitted, the bill imposes a very strict and onerous process on any plan seeking to remove a pharmacy

from its network. Thus, even when the PBM concludes that it has “cause” to terminate a pharmacy – a term that is undefined in the legislation– a PBM would not be able to do so for 60 days. In addition to that 60-day protection, the pharmacy would also be afforded the right to appeal the plan’s decision to a third-party arbitrator -- whose only apparent function is to second guess the entirely appropriate business judgments made by parties to a contract. By granting these protections to pharmacies, HB5254 creates an uneven playing field that disadvantages the employer or health plan who has elected to offer the benefit. That is because if the provider is granted these protections, pharmacies will not have the same incentives to bid aggressively for the right to serve in the network. Once the employer or health plan loses the ability to obtain deeper discounts, the value of the pharmacy network as a cost management tool will also be lost and health care costs will suffer as a result.

When an employer voluntarily elects to provide prescription drug benefits to their employees and retirees, they should have the right to determine which providers they want in their network. If one provider is making it harder or more costly for an employer to provide much needed health benefits and to deliver those services in a cost-effective and efficient manner, then the employer should retain the right to remove that provider from their network.

This same principle applies to most contractual relationships. For example, if one of our clients is unhappy with the price or services that they are receiving from us, they will ask us for a better rate or they will shop around among our competitors -- both of which occur frequently. If we were granted some kind of statutory protection that prohibited our clients from terminating their contracts with us, we would not have the

same incentives to offer high quality services at very competitive rates. In effect, we would be legally protected from our own inefficiencies, raising health care costs, knowing that we would retain our clients unless we did something egregious. Surely this is not the kind of incentive that the State is looking to promote.

In summary, complying with the requirements proposed under HB5254 will increase the cost of prescription drug care. This will lead to further escalation in drug spending not only for private sector plans, but also for public plans such as state employee/retiree and school district employee plans. In the end, the additional costs that will come about as a result of this legislation will further compound the fiscal pressures facing the state and other public payors. In a time of rapidly escalating drug costs, state and national policymakers should be focused on encouraging the use of innovative and effective cost control techniques rather than discouraging them.

I appreciate the opportunity to express our views on this legislation and I remain available to answer any questions that you may have.